

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JEROME BOYER,

12 Plaintiff,

13 vs.

14 JAY MULEIN, et al.,

15 Defendants.

16 Case No.: 2:17-CV-4243-GW-FFMx

17 Hon. George H. Wu

18 **STIPULATED PROTECTIVE**
19 **ORDER¹**

20 1. A. PURPOSES AND LIMITATIONS

21 Discovery in this action is likely to involve production of confidential,
22 proprietary, or private information for which special protection from public disclosure
23 and from use for any purpose other than prosecuting this litigation may be warranted.
24 Accordingly, the parties hereby stipulate to and petition the Court to enter the
25 following Stipulated Protective Order. The parties acknowledge that this Order does
26 not confer blanket protections on all disclosures or responses to discovery, and that
27 the protection it affords from public disclosure and use extends only to the limited

28

¹ This Stipulated Protective Order is substantially based on the model protective
order provided under Magistrate Judge Frederick F. Mumm's Procedures.

1 information or items that are entitled to confidential treatment under the applicable
2 legal principles. The parties further acknowledge, as set forth in Section 13.3, below,
3 that this Stipulated Protective Order does not entitle them to file confidential
4 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
5 followed and the standards that will be applied when a party seeks permission from
6 the court to file material under seal.

7

8 **B. GOOD CAUSE STATEMENT**

9 This action is likely to involve personal information, trade secrets, customer
10 and pricing lists and other valuable research, development, commercial, financial,
11 and/or proprietary information for which special protection from public disclosure
12 and from use for any purpose other than prosecution of this action and related claims
13 is warranted. Such confidential and proprietary materials and information consist of,
14 among other things, personal financial and medical information, confidential business
15 or financial information, information regarding confidential business practices, or
16 other confidential research, development, or commercial information (including
17 information implicating privacy rights of third parties), information otherwise
18 generally unavailable to the public, or which may be privileged or otherwise protected
19 from disclosure under state or federal statutes, court rules, case decisions, or common
20 law. Accordingly, to expedite the flow of information, to facilitate the prompt
21 resolution of disputes over confidentiality of discovery materials, to adequately
22 protect information the parties are entitled to keep confidential, to ensure that the
23 parties are permitted reasonable necessary uses of such material in preparation for and
24 in the conduct of trial, to address their handling at the end of the litigation and in
25 related proceedings, and serve the ends of justice, a protective order for such
26 information is justified in this matter. It is the intent of the parties that information
27 will not be designated as confidential for tactical reasons, and that nothing be so
28 designated without a good faith belief that it has been maintained in a confidential,

1 non-public manner, and that there is good cause why it should not be part of the public
2 record of this case.

3

4 2. **DEFINITIONS**

5 2.1 **Action:** this pending federal law suit.

6 2.2 **Challenging Party:** a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3 **“CONFIDENTIAL” Information or Items:** information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for protection
10 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
11 Cause Statement.

12 2.4 **Counsel:** Outside Counsel of Record and House Counsel (as well as their
13 respective support staff).

14 2.5 **Defendants:** Any current or future defendants in the Action.

15 2.6 **Designating Party:** a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.7 **Disclosure or Discovery Material:** all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this Action.

22 2.8 **Expert:** a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 2.9 **House Counsel:** attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

28 ///

1 2.10 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this Action.

3 2.11 Outside Counsel of Record: attorneys who are not employees of a party
4 to this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party, and includes support staff.

7 2.12 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.14 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.15 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
19 from a Producing Party.

20

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or extracted
24 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
25 Protected Material; and (3) any testimony, conversations, or presentations by Parties
26 or their Counsel that might reveal Protected Material.

27 Any use of Protected Material at trial shall be governed by the orders of the
28 trial judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this Action, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. RELATED PROCEEDINGS

11 Notwithstanding any other provisions of this Stipulation and Order, it is
12 understood that the Defendants may use the Protected Materials in any separate
13 proceedings in which they pursue claims against each other or any Non-Parties, so
14 long as such claims arise from or relate to (1) the life insurance coverage that
15 Defendant Zurich American Life Insurance Company issued to Plaintiff Jerome
16 Boyer, or (2) the procurement or maintenance of financing to pay for the foregoing
17 coverage. In particular, the Defendants may use the Protected Materials in connection
18 with proceedings involving such claims (the “Related Proceedings”), and may quote
19 or attach Protected Materials to any court filing in such Related Proceedings.

20 In connection with any Related Proceedings, the Defendants shall take
21 reasonable steps to minimize the likelihood of public disclosure of Protected
22 Materials. In the event that it seeks to quote or attach Protected Materials to any court
23 filing in a Related Proceeding, the Receiving Party shall give reasonable notice to the
24 Disclosing Party, so as to provide it with the opportunity to request an order sealing
25 the confidential portions of the proposed filing.

26 ///

27 ///

1 6. **DESIGNATING PROTECTED MATERIAL**

2 6.1 **Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or Non-Party that designates information or items for protection in this
4 Action under this Order must take care to limit any such designation to specific
5 material that qualifies under the appropriate standards. The Designating Party must
6 designate for protection only those parts of material, documents, items, or oral or
7 written communications that qualify so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating Party
14 to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 6.2 **Manner and Timing of Designations.** Except as otherwise provided in
19 this Order (see, e.g., second paragraph of Section 6.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix at a minimum, the legend
27 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
28 contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and before
6 the designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or
9 portions thereof, qualify for protection under this Order. Then, before producing the
10 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
11 to each page that contains Protected Material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 (b) for testimony given in depositions that the Designating Party identify
16 the Disclosure or Discovery Material on the record, before the close of the deposition
17 all protected testimony.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information is stored the legend
21 “CONFIDENTIAL.” If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall identify the protected
23 portion(s).

24 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive the
26 Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28 // /

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3

4 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 **7.1 Timing of Challenges.** Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 **7.2 Meet and Confer.** The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1 et seq.

10 **7.3** The burden of persuasion in any such challenge proceeding shall be on
11 the Designating Party. Frivolous challenges, and those made for an improper purpose
12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
13 expose the Challenging Party to sanctions. Unless the Designating Party has waived
14 or withdrawn the confidentiality designation, all parties shall continue to afford the
15 material in question the level of protection to which it is entitled under the Producing
16 Party's designation until the Court rules on the challenge.

17

18 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 **8.1 Basic Principles.** Except as described in the Section 5 (RELATED
20 PROCEEDINGS), *supra*, a Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending, or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the Action has been terminated, a Receiving
25 Party must comply with the provisions of Section 14 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a
27 location and in a secure manner that ensures that access is limited to the persons
28 authorized under this Order.

1 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court, permitted in writing by the Designating Party, or as
3 described in Section 5 (RELATED PROCEEDINGS), *supra*, a Receiving Party may
4 disclose any information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
6 as employees of said Outside Counsel of Record to whom it is reasonably necessary
7 to disclose the information for this Action;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this Action;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the
21 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
22 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
23 not be permitted to keep any confidential information unless they sign the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
25 agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material may be
27 separately bound by the court reporter and may not be disclosed to anyone except as
28 permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

111

111

111

111

10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

1 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without prior
17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
18 parties reach an agreement on the effect of disclosure of a communication or
19 information covered by the attorney-client privilege or work product protection, the
20 parties may incorporate their agreement in the stipulated protective order submitted
21 to the court.

22 13. MISCELLANEOUS

23 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 13.2 Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 13.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the specific
7 Protected Material at issue. If a Party's request to file Protected Material under seal is
8 denied by the court, then the Receiving Party may file the information in the public
9 record unless otherwise instructed by the court.

10

11 14. **FINAL DISPOSITION**

12 Beginning 18 months after the final disposition of this Action, as defined in
13 Section 4 (DURATION), *supra*, a Designating Party may make written requests to a
14 Receiving Party for the return or destruction within 60 days of all Protected
15 Material. As used in this subdivision, “all Protected Material” includes all copies,
16 abstracts, compilations, summaries, and any other format reproducing or capturing
17 any of the Protected Material. Whether the Protected Material is returned or
18 destroyed, the Receiving Party must submit a written certification to the Producing
19 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
20 deadline that (1) identifies (by category, where appropriate) all the Protected
21 Material that was returned or destroyed and (2) affirms that the Receiving Party has
22 not retained any copies, abstracts, compilations, summaries or any other format
23 reproducing or capturing any of the Protected Material. Notwithstanding the
24 foregoing, Counsel are entitled to retain an archival copy of all pleadings, motion
25 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
26 deposition and trial exhibits, expert reports, attorney work product, and consultant
27 and expert work product, even if such materials contain Protected Material. Any

28 / / /

1 such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

3 Nothing in the present Section is intended to prevent or limit the use of
4 documents or information produced in any Related Proceedings.

5 **15. VIOLATIONS**

6 Any violation of this Order may be punished by any and all appropriate
7 measures including, without limitation, contempt proceedings and/or monetary
8 sanctions.

9
10 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

11 DATED: April 26, 2018
12

13 /S/ Frederick F. Mumm
14 HON. FREDERICK F. MUMM
15 United States Magistrate Judge
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of **Boyer v. Mulein, et al., Case No. 2:17-CV-4243-GW-FFMx**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: